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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BARREN MAR THUNA,

Plaintiff,

vs.

PHILLIP J. KOHN, *et al.*,

Defendants.

Case No. 2:17-cv-02395-JAD-VCF

ORDER

MOTION TO EXTEND TIME [ECF No. 33]

Before the Court is Plaintiff Barren Thuna's request that the Court grant a continuance to respond to Defendants' motion to dismiss. (ECF No. 33). For the reasons stated below, Plaintiff's request is granted in part.

On April 2, 2018, Defendants filed a motion to dismiss Plaintiff's complaint. (ECF No. 27). Defendants argue that the complaint fails to plead sufficient facts to support a conspiracy claim and the conspiracy claim is barred by *Heck v. Humphrey*. (*Id.* at 3, 5). The Court issued a minute order outlining guidelines for responding to various dispositive motions, including motions to dismiss and motions for summary judgment. (ECF No. 28). On April 11, 2018, Plaintiff filed an Opposition to Dismissal. (ECF No. 33). Plaintiff asks for a continuance of at least 60 days "to allow for discovery" to "oppose summary judgment." (*Id.* at 1). He also asks for time to serve Defendant Quintin Dollente. (*Id.* at 1-2).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 812 (9th Cir. 2010) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "Discovery at the pleading stage is only appropriate where factual issues are raised by a Rule 12(b) motion." *Ministerio*

1 *Roca Solida v. U.S. Dep't of Fish & Wildlife*, 288 F.R.D. 500, 506 n.7 (D. Nev. 2013); *see also Jarvis v.*
2 *Regan*, 833 F.2d 149, 155 (9th Cir. 1987).

3 It does not appear that discovery is needed to address Defendant's motion to dismiss. In their
4 motion to dismiss, Defendants argue that Plaintiff's complaint fails to plead sufficient facts to support a
5 conspiracy claim and the conspiracy claim is barred by *Heck v. Humphrey*. These are legal arguments
6 rather than factual ones. Plaintiff does not make it clear how further discovery will affect the statements
7 already made in his complaint or the impact *Heck v. Humphrey* has on his case. In addition, Defendants'
8 arguments in the motion to dismiss relate to the entirety of Plaintiff's case, whether or not Defendant
9 Quintin Dollente has been served. Therefore, a continuance of 60 days is not warranted.

10 However, the time to respond to Defendants' motion ended on April 16, 2018. While Plaintiff
11 filed an Opposition to Dismissal, Plaintiff's opposition did not substantively respond to Defendants'
12 arguments. The Court will extend the time for Plaintiff to file a substantive response to the motion to
13 dismiss.

14 Accordingly, and for good cause shown,

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16 IT IS ORDERED that Plaintiff's request that the Court grant a continuance to respond to
17 Defendants' motion to dismiss (ECF No. 33) is GRANTED in part. Plaintiff will have until June 8, 2018
18 to file a response to Defendants' motion to dismiss.

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20 **NOTICE**


21 Under Local Rule IB 3-2, any objection to this Order must be in writing and filed with the Clerk
22 of the Court within 14 days. The Supreme Court has held that the courts of appeal may determine that an
23 appeal has been waived due to the failure to file objections within the specified time. (*See Thomas v. Arn*,
24 474 U.S. 140, 142 (1985)). This circuit has also held that (1) failure to file objections within the specified
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1 time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the
2 District Court's order and/or appeal factual issues from the order of the District Court. (*See Martinez v.*
3 *Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th
4 Cir. 1983)).

5 Pursuant to LSR 2-2, the Plaintiff must immediately file written notification with the court of any
6 change of address. The notification must include proof of service upon each opposing party or the party's
7 attorney. **Failure to comply with this Rule may result in dismissal of the action.** (*See* LSR 2-2).

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9 IT IS SO ORDERED.

10 DATED this 16th day of May, 2018.

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14 CAM FERENBACH
15 UNITED STATES MAGISTRATE JUDGE
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